

General Information Letter: Investments in real estate are not qualifying investments for purposes of determining whether a partnership is an investment partnership.

September 11, 2006

Dear:

This is in response to your letter dated June 28, 2006, which has been referred to this office for reply. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.ILtax.com.

Your letter states as follows:

I am a CPA with a client that has a partnership that owns a restaurant building in Illinois. The building is leased under a net lease arrangement under which the partnership receives gross rent only. The only expense of the partnership is depreciation.

Does this partnership qualify as an investment partnership?

My understanding is that after December 31, 2004, investment partnerships are not required to file Form IL-1065 and would not be subject to the 1.5% replacement tax.

RULING

Section 1501(a)(11.5) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/1501(a)(11.5)) defines the term "investment partnership" as follows:

(11.5) Investment partnership.

(A) The term "investment partnership" means any entity that is treated as a partnership for federal income tax purposes that meets the following requirements:

- (i) no less than 90% of the partnership's cost of its total assets consists of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its activities as an investment partnership;
- (ii) no less than 90% of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities; and
- (iii) the partnership is not a dealer in qualifying investment securities.

(B) For purposes of this paragraph (11.5), the term "qualifying investment securities" includes all of the following:

- (i) common stock, including preferred or debt securities convertible into common stock, and preferred stock;
- (ii) bonds, debentures, and other debt securities;
- (iii) foreign and domestic currency deposits secured by federal, state, or local governmental agencies;
- (iv) mortgage or asset-backed securities secured by federal, state, or local governmental agencies;

- (v) repurchase agreements and loan participations;
- (vi) foreign currency exchange contracts and forward and futures contracts on foreign currencies;
- (vii) stock and bond index securities and futures contracts and other similar financial securities and futures contracts on those securities;
- (viii) options for the purchase or sale of any of the securities, currencies, contracts, or financial instruments described in items (i) to (vii), inclusive;
- (ix) regulated futures contracts;
- (x) commodities (not described in Section 1221(a) of the Internal Revenue Code) or futures, forwards, and options with respect to such commodities, provided, however, that any item of a physical commodity to which title is actually acquired in the partnership's capacity as a dealer in such commodity shall not be a qualifying investment security;
- (xi) derivatives; and
- (xii) a partnership interest in another partnership that is an investment partnership.

The information you provided does not allow for a determination as to whether the partnership qualifies as an investment partnership under the IITA. However, the building owned by the partnership does not constitute "qualifying investment securities" as defined above. As a result, the cost of the building is not considered the cost of a qualifying asset for purposes of section 1501(a)(11.5)(A)(i), nor is the rental income considered qualifying income for purposes of section 1501(a)(11.5)(A)(ii).

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)